IN THE CLUB COURTS.

SUPREME COURT OF THE AMES–GRAY.

Contract implied in law. Improvement of another's property under mistake, in good faith.

The facts were the same as in *Mining Co.* v. *Hertin*, 37 Mich. 332. The plaintiff, under a *bona-fide* mistake as to boundaries, cut trees on the defendant's adjoining land, converted them into cord-wood, and hauled them to the shore of the lake. The wood there was worth three times as much as it was in its original condition. The defendant, then finding out for the first time what had been done, took possession of the wood, and received the benefit of all the plaintiff's labor, for which *indebitatus assumpsit* is brought.

The plaintiff contended that the defendant had enriched himself at the plaintiff's expense, that the plaintiff was not officious in his conduct, so the common counts would lie. *Ambrose* v. *Kerrison*, 10 C. B. 776; *Chase* v. *Corcoran*, 106 Mass. 286. That there is an equity in favor of the plaintiff is shown by the fact that a bill in equity would lie for the value of the improvements, in the analogous case of realty improved under a mistake. *Bright* v. *Boyd*, 1 Story, 478; *Thomas* v. *Thomas*, 16 B. Mon. 420.

The defendant argued that the law would not imply a consent to a trespass. As he had no knowledge of the plaintiff's labor there was no implied assent to it.

The court decided in favor of the defendant. A trespasser at common law is a wrong-doer; no wrong can give the wrong-doer a right of action. The cases in equity do not apply, for equity can probe the plaintiff's conscience; they rather show there is no remedy at law. In the cases cited, where recovery was allowed, the plaintiff had not exceeded his legal rights.

SUPERIOR COURT OF THE POW–WOW.

Tort for injury to horse from a barbed-wire fence.

The ground of action in this case consisted of two facts, viz., the erection of the fence by the defendant and consequent injury to the plaintiff's horse.

The defendant demurred, maintaining that he was not liable unless the plaintiff also declared and proved that the fence was erected in an improper place, where the injury complained of would be the natural result. In support of this defence the defendant cited *Polak* v. *Hudson*, *New Jersey Law Journal*, Feb., 1887, p. 43, a case directly in point, in which the defendant's liability, according to the charge to the jury, seems to turn on the fact that the defendant placed the fence between his land and the plaintiff's pasture, knowing that the plaintiff was accustomed to turn a young colt into the pasture, and that, therefore, injury would naturally follow.

But the court held that a barbed-wire fence, *per se*, was so dangerous, that in case of resulting injury the plaintiff should be allowed to recover, unless the defendant, confessing the plaintiff's cause of action to be good, could also show that, from the nature of the ground, as, for example, a thick woodland, or from public policy, as fencing with barbed wire tracts of prairie land to prevent stampede, the maintenance of the fence was justifiable.

A barbed-wire fence, therefore, was deemed to come within that class of sources of injury as to which no averment of negligence or of knowledge of probable injury is necessary, as the following: a poisonous yew-tree, *Crowhurst* v. *Amersham Burial Board*, 4 Ex. D. 5; a filthy drain, *Ball* v. *Nye*, 99 Mass. 582; an open pit, *Growcott* v. *Williams*, 32 L. J., 2 B. 237; a rusty wire-cable fence, *Firth* v. *Bowling Iron Co.*, 3 C.P.D. 254; a reservoir, *Ryland* v. *Fletcher*, L.R., 3 H.L. 330.

FROM THE LECTURE ROOM.

These notes were taken by students from lectures delivered as part of the regular course of instruction in the school. They represent, therefore, no carefully formulated statement of doctrine, but only such informal expressions of opinion as are usually put forward in the class room. For the form of these notes the lecturers are not responsible.

TRANSFER OF CHOSES IN ACTION. (*From Professor Ames' Lectures.*) — In England, by the Statute 36 and 37 Vic., c. 66, § 25, rule 6, the legal right to a chose in action is transferable. Before the passage of this act, however, and in jurisdictions where it is not in force, conflicting decisions have been reached in cases where the obligee of a chose in action has attempted to make a gift of it to another.

In Fortescue *v.* Barnett (3 M. & K. 36) the obligee of a life-insurance policy by deed assigned and transferred the policy to F. It was held that the gift of the policy was complete without delivery; F. had a perfect title. This case has been followed by later English cases. 14 Ch. D. 179.

In the case of Edwards *v.* Jones (1 M. & C. 226) the obligee of a bond indorsed upon it an assignment to E., "with full power for said E. to sue thereon," and delivered the bond to E. It was held that this was an imperfect gift, and the donee took nothing. Edwards *v.* Jones has been followed in England, Milroy *v.* Lord (4 DeG., F., & J. 264). Thus, in that jurisdiction a distinction is made between an insurance policy and other choses in action.

On the other hand, in the United States generally no such distinction has been made. The rule is that a gift accompanied by a delivery of the instrument passes the legal title; while without delivery no interest passes. (Grover *v.* Grover, 24 Pick. 261; and note to same in Ames, Cases on Trusts, 110.) The American rule, therefore, is directly opposed to the rule of Edwards *v.* Jones.

It is suggested that the true solution of this question is the following: when the donor gives the instrument to the donee, intending to make a complete gift, there is a valid transfer by way of an implied execution of an irrevocable power of attorney to sue in the name of the donor. Thus the right of the donee is not equitable, but is legal.

This suggestion has not been adopted by the courts; but it seems to have the merit of carrying out the intention of the parties, and reaching a highly desirable result (as is shown by the English statute and the American decisions, which reach the same end by another course of reasoning) without doing violence to any legal principles.

It is by no means a new idea. A power of attorney executed for a consideration gives a right to sue in the name of the transferrer of the chose in action.

1 Lilly Abr. 103; 2 Bl. Com. 442; 2 Story Eq. Juris. § 1056; Co. Lit. 232 B, Butler's note; 8 T.R. 571; L.R. 2 C.P. 308, 309.